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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 348

CLARA L. WASHINGTON, *Petitioner*

v.

GOLDEN STATE MUTUAL LIFE INSURANCE COMPANY, *Respondent*

PETITION FOR REHEARING

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TO THE HONORABLE SUPREME COURT:

Petitioner prays that the Court grant Rehearing of its Order of October 13, 1969, denying the Petition for a Writ of Certiorari to the Supreme Court of Texas.

REASONS FOR GRANTING REHEARING

1. Petitioner regrets that delivery of the Petition for a Writ of Certiorari was not made to the office of the Clerk of the Supreme Court or to the guard at the Supreme Court Building on July 15, 1969.

As a result of correspondence with the United States Post Office concerning the delivery of the certified mail bearing the Petition for a Writ of Certiorari, a reply letter was received from the Postmaster of the United States Post Office at Houston, Texas, dated September 2, 1969, which stated in part as follows:

"This acknowledges receipt of your letter of August 28, again on the subject of your Certified article No. 021829, mailed near mid-night, July 14, to the Supreme Court, Washington, D. C.

With the submission of the envelope in which this item was mailed, I wish to advise that I will again refer the entire file to the Postmaster, Washington, D. C. for possible further information concerning the delivery. Based on the stated time of mailing as well as the Houston, Texas postmark of a.m., July 15, it appears that the item was dispatched to Washington, D. C., at 6:15 a.m. via Eastern Airlines, flight 580, to arrive at 11:35 a.m."

The original of the letter is forwarded to the Clerk of the Supreme Court together with the 40 printed copies of this Petition for Rehearing.

2. Petitioner has sought Justice under law, and now that the petition for a writ of certiorari has been received one day late by the office of the Clerk of the Supreme Court, Petitioner does not question the Order of the Court in denying the petition for a writ of certiorari. But this incident highlights and brings into clear focus, one point, namely: Has equal dignity, has a fair interpretation been accorded by the State of Texas appellate courts to the Texas Rules of Civil Procedure in holding that the filing of the appeal bond one day late (according to their

computation) caused the appellate courts of Texas to lack jurisdiction; but failing to hold that the trial court lacked jurisdiction to grant the summary judgment to the movant against the opposite party, the petitioner, because the trial court decided the case one day prior to 10 days notice that is required to be given by the Texas Rules of Civil Procedure.

3. Respondent is in error in its Brief when it states under Reasons for not granting the writ, on page 4, that Petitioner does not object on constitutional grounds to the action taken by the Texas courts denying her petition for bill of review; for Petitioner in her petition for a writ of certiorari, under Reasons for granting the writ, states under Reason 2, page 6: "It appears that a question is presented here as to whether the State of Texas through its state courts has denied to the petitioner in the prior case and in the instant case, the equal protection of the laws under Section 1, of the Fourteenth Amendment to the Constitution of the United States.

Respondent is again in error in its Brief when it states that Petitioner did not attack the Texas requirements for bill of review, for such were attacked in the Brief of appellant and in Appellant's Motion for Rehearing in Court of Civil Appeals, and in Application for Writ of Error in Supreme Court of Texas, and in the Statement of Petitioner in her Petition for a Writ of Certiorari, under sub-paragraph 3.

4. It is noted that in the case cited by the respondent in its Brief in opposition, namely, *French v. Brown,* 424 S.W.2d 893, 895 (Tex. 1967); *Hanks v. Rosser,* 378 S.W.2d 31, 34 (Tex. 1964); *Alexander v. Hagedorn,* 226 S.W.2d 996, 998 (Tex. 1950); that in each of those cases

the Petitioners for a Bill of Review had a trial on the merits of the entire controversy which has been denied to the petitioner in the instant case. In the cases of *French v. Brown, Hanks v. Rosser,* and *Alexander v. Hagedorn,* there was no motion for summary judgment granted which would have denied the petitioners in those cases, for a Bill of Review, their day in Court and due process of law, and equal protection of the laws, but in the instant case of *Washington v. Golden State Mutual Life Insurance Company,* Petitioner in her Petition for a Bill of Review has had a second successive Motion for Summary Judgment awarded against her by the same movant, which summary judgment in her Petition for Bill of Review has prevented her from having her day in Court to prove the allegations made in her Petition for Bill of Review that she had a meritorious cause of action, which she was prevented from asserting by the extrinsic fraud or wrongful act of the opposite party, unmixed with any fault or negligence of the petitioner. The Texas courts never allowed the petitioner her day in court to prove the above allegations, and that therefore the petitioner was and has been denied due process of law and equal protection of the laws under Section 1, of the Fourteenth Amendment to the Constitution of the United States.

Respondent, who has played a part in the denial of the basic and fundamental right of due process of law and equal protection of the laws to the petitioner, which basic and fundamental right is vouchsafed to all citizens, describes the case, as "a classic case of a 'federal question' so absolutely devoid of merit as to be frivolous."

CONCLUSION

For the reasons set forth above, and in the petition for a writ of certiorari, it is respectfully petitioned that the Supreme Court give consideration to granting a rehearing, and that if it is deemed in accord with fair administration of justice in State courts of Texas and an according of due process of law and equal protection of the laws to afford this petitioner a rehearing, that upon rehearing a writ of certiorari issue to the Supreme Court of Texas.

ROBERT W. HAINSWORTH
Counsel for Petitioner

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

ROBERT W. HAINSWORTH
Counsel for Petitioner